

This letter outlines the principles of nexus and discusses applicability of local sales taxes. See 86 Ill. Adm. Code 270.115. (This is a GIL).

October 18, 2000

Dear Mr. Xxxxx:

This letter is in response to your letter dated August 8, 2000. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

We have been advised to forward our request to your division. Please find enclosed, a copy of our letter dated April 17, 2000 to the Revenue Division. We await your reply as soon as possible.

Thank you in advance for your attention to this matter. If there is any additional information you require, please feel free to contact me at your earliest convenience.

In your April 17, 2000 letter, you have stated and made inquiry as follows:

Our accounting firm has recently been engaged to perform the tax and accounting services for a New Jersey corporation engaged in the business of importing merchandise which is sold to various customers who use the material in their manufacturing process.

All sales are made and processed in New Jersey. Once a firm order is received, the sale is consummated. The merchandise is then shipped from a foreign country and received in public warehouses throughout the United States. One or more public warehouses are located within your state. The merchandise is stored for a period of up to thirteen (13) weeks in order to meet the customer's delivery requirements. The merchandise is then shipped to customers within the state in which the warehouse is located at which time title transfers to the customer. All shipments are made from the public warehouse via common carrier.

The warehouse facility is a public warehouse, available to other business entities. There is no common control/ownership between the warehouse and our client. Our client does not have any employees, salespersons, or other representatives at the warehouse, or any other location within your state.

Based on the facts and circumstances as detailed above, I would like your opinion as to whether or not the above activity creates an obligation on the part of our client to:

- a. Register to do business within your state as a foreign corporation
- b. Subject our client to any taxes by your state such as Corporation Business Tax, Corporation Income Tax, Personal Property Tax, Gross Receipts Tax, etc.
- c. File taxes using the apportionment factors as promulgated by 'The Uniform Division of Income for Tax Purposes Act' (UDITPA).

In the event that your agency opines that our client does not have a filing responsibility, no further action will be required; however, should your agency opine that there is, in fact, a filing obligation, our client will want to be in full compliance. If our client voluntarily discloses their prior filing obligation, does your agency have a voluntary disclosure policy whereby penalties are abated, and prior filings are limited to three (3) years?

I trust that the above information sets forth the facts and circumstances that would allow your agency to provide an 'informal—non-binding' opinion. Should any further information be required, please do not hesitate to contact the undersigned.

In as much as this issue involves 1999 tax returns, your prompt response would be appreciated.

Your letter has been forwarded to the Sales and Excise Taxes section of the Legal Services Office for response regarding your sales tax questions. A response to your income tax questions is being sent under separate cover from the Income Tax section.

The Department is unable to make nexus determinations in the context of a General Information letter because the amount of information required to make that determination is often best gathered by an auditor. The following information outlines the principles of nexus. We hope it is helpful in determining whether your client is responsible for paying tax in Illinois.

An "Illinois Retailer" is one who either accepts purchase orders in the State of Illinois or maintains an inventory in Illinois and fills Illinois orders from that inventory. The Illinois Retailer is then liable for Retailers' Occupation Tax on gross receipts from sales and must collect the corresponding Use Tax incurred by the purchasers.

Another type of retailer is the retailer maintaining a place of business in Illinois. The definition of a "retailer maintaining a place of business in Illinois" is described in 86 Ill. Adm. Code 150.201 (i), enclosed. This type of retailer is required to register with the State as an Illinois Use Tax collector. See 86 Ill. Adm. Code 150.801, enclosed. The retailer must collect and remit Use Tax to the State on behalf of the retailer's Illinois customers even though the retailer does not incur any Retailers' Occupation Tax liability.

The United States Supreme Court in Quill Corp. v. North Dakota, 112 S.Ct. 1904 (1992), set forth the current guidelines for determining what nexus requirements must be met before a person is properly subject to a state's tax laws. The Supreme Court has set out a 2-prong test for nexus. The first prong is whether the Due Process Cause is satisfied. Due process will be satisfied if the person or entity purposely avails itself or himself of the benefits of an economic market in a forum state. Quill at 1910.

The second prong of the Supreme Court's nexus test requires that, if due process requirements have been satisfied, the person or entity must have physical presence in the forum state to satisfy the Commerce Clause. A physical presence is not limited to an office or other physical building. Under Illinois law, it also includes the presence of any agent or representative of the seller. The representative need not be a sales representative. Any type of physical presence in the State of Illinois, including the vendor's delivery and installation of his product on a repetitive basis, will trigger Use Tax collection responsibilities. Please refer to Brown's Furniture, Inc. v. Zehnder, (1996), 171 Ill.2d 410.

The final type of retailer is the out-of-State retailer that does not have sufficient nexus with Illinois to be required to submit to Illinois tax laws. A retailer in this situation does not incur Retailers' Occupation Tax on sales into Illinois and is not required to collect Use Tax on behalf of its Illinois customers. However, the retailer's Illinois customers will still incur Use Tax on the purchase of the out-of-State goods and have a duty to self-assess their Use Tax liability and remit the amount directly to the State. The Use Tax rate is 6.25%.

Retailers that do not have nexus with Illinois can voluntarily register with the Department for the convenience of their customers. These retailers would collect Use Tax from their customers and remit it to the Department.

In addition to the State Retailers' Occupation Tax, imposed at the rate of 6.25%, various local taxes may apply to a transaction. The enclosed copy of 86 Ill. Adm. Code 270.115 explains the manner in which one determines if a local tax, and which local tax, is applicable to a transaction.

As the regulation explains, local taxes are incurred when sales occur within a jurisdiction imposing a local tax. The Department has determined that the most important element of selling occurs when a seller accepts the purchaser's offer to buy. Consequently, selling is deemed to occur where the purchase order is accepted by the seller. It is the rate imposed by a jurisdiction at that location that will determine the correct amount of local taxes. The location of the purchaser, or the point at which title passes to the buyer, is immaterial.

If a purchase order is accepted outside this State but the tangible personal property which is sold is in an inventory of the retailer located within a home rule municipality at the time of sale (or is subsequently produced in the home rule municipality), then delivered in Illinois to the purchaser, the place where the property is located at the time of sale (or is subsequently produced in Illinois) will determine where the seller is engaged in business for Home Rule Municipal Retailers' Occupation Tax purposes with respect to such sale. See Section 270.115(b)(3).

The Department of Revenue's Board of Appeals administers a voluntary disclosure program that can provide for limited liabilities for participants who come forward and disclose their liabilities. Please see the enclosed copy of 86 Ill. Adm. Code 210.126 for information about the voluntary disclosure program. The Board of Appeals can be reached at (312)814-1607.

As to whether a corporation must register to do business in Illinois, please contact:

Office of the Illinois Secretary of State  
Department of Business Services  
Howlett Building, Room 328  
Springfield, IL 62756

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Martha P. Mote  
Associate Counsel

MPM:msk  
Enc.